

REMARKS

Applicant's Declaration and Power of Attorney appoints the undersigned as his agent. Therefore, the Examiner's cooperation is requested to insure that future correspondence is directed to:

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Claims 1-21 are pending in this application.

Claims 22-24 have been cancelled by way of this amendment.

The Examiner has identified a plurality of inventions among the claims. Responsively, provisional election was made to prosecute the invention of Group I, claims 1-21. This election is hereby confirmed by the cancellation of claims 22-24, without prejudice to the re-introduction of the cancelled claims in a divisional application.

Claims 9-10 have been objected to as being dependent upon a rejected base claim. Claim 9 has been rewritten in independent form including all limitations of the base claim and intervening claims. The Examiner has indicated that claim 9, so rewritten, would be allowable. Claim 10 depends from claim 9 and should, therefore, also be considered allowable.

The Examiner has rejected claims 1-2, 7-8, 11-16 and 20-21 as unpatentable over U.S. Patent No. 5,860,289 to Wetzel (hereinafter "Wetzel") in view U.S. Patent Publication No. 2003/0173876A1 to Fujii et al. (hereinafter "Fujii"). The applicant respectfully disagrees.

In order to establish that any claim is obvious the Examiner must identify 1) all of the claimed elements in the prior art; 2) a reason or motivation to modify or combine these elements to arrive at the claimed invention; and 3) a reasonably likelihood of success. (See M.P.E.P. 2141)

It is submitted that the Examiner has failed to cite documents that, alone or in combination, teach all of the elements of independent claim 1. In particular, neither Wetzel nor Fujii teach or suggest the use of a drawer positioned below a shelf such that cooled air that spills out of the shelf is received by the drawer. Additionally, neither Wetzel nor Fujii teach or suggest the use of a shelf positioned below a drawer such that cooled air that spills out of the drawer is received by the shelf.

Wetzel may be considered to disclose “a cooled air plenum”, “a unit cooler” and “a shelf mounted...below a first cooled air egress passageway in communication with said plenum” as required by claim 1. As admitted by the Examiner, Wetzel does not disclose a drawer as required by claim 1. Additionally, Wetzel does not disclose an arrangement wherein cooled air that spills out of a shelf is received by a drawer.

The Examiner appears to have cited Fujii to illustrate that the use of a drawer as part of a refrigerated showcase was known at the time of the invention. However, Fujii does not disclose a shelf as required by claim 1. Additionally, Fujii does not disclose an arrangement wherein cooled air that spills out of a shelf is received by a drawer.

It is submitted that obviousness cannot be established by combining prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. It is further submitted that the mere fact that the prior art may be modified in the manner suggested by

the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification.

Wetzel and Fujii, alone or in combination, simply fail to disclose each of the elements of the invention of claim 1 and fail to provide motivation to arrive at the claimed invention. Withdrawal of the rejection of claim 1, and claims 2, 7-8, 11-16 and 20-21 dependent thereon, is therefore respectfully requested.

The Examiner has rejected claims 3-5, 6, and 17-18 as obvious over Wetzel in view of Fujii in further view of Gerweck (3-5), Rainwater (6) and Navarro (17 and 18). It is submitted that none of the further references provide elements of claim 1 missing from the combination of Wetzel and Fujii, as discussed above, or provide motivation to arrive at the claimed invention. Withdrawal of the rejection of claims 3-5, 6, and 17-18, which are all dependent on claim 1, is therefore respectfully requested.

The Examiner has rejected claims 6 and 19 under 35 U.S.C. §112 as failing to comply with the enablement requirement. In particular, with regard to claim 6, the Examiner indicates that there appears to be no description in the specification for the awning. The attention of the Examiner is directed to paragraph [0038], which includes the sentence:

As such, an awning frame 82, for supporting an awning, may be attached to the refrigerated merchandiser 10 (see FIG. 6) to shade the produce, in this case potatoes, from the grocery store lighting.

Further particularly, with respect to claim 19, the Examiner indicates that there appears to be no description in the specification for the adjustment of the cooled air egress

passageway. The attention of the Examiner is directed to paragraph [0037], which includes the sentence:

Each of the distinct passageways may be selectively and gradually opened, say, through the use of flaps or sliding doors, or closed to control the volume of air flowing in to the corresponding section of the upper shelf 44U.

Withdrawal of the rejection of claims 6 and 19 under 35 U.S.C. §112 is therefore respectfully requested.

No new matter has been added by way of this amendment.

Applicant respectfully requests that a timely Notice of Allowance be issued in the case.

Wherefore, a favorable action is earnestly solicited.

Respectfully submitted,

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